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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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SALVADOR BENAVIDES, etc.,

Plaintiff and Appellant,

v.

CITY OF STOCKTON,

Defendant and Respondent.

C084034

(Super. Ct. Nos. 39-2012-  
00275791CUPASTK,  
STKCVUAT20120001066)

Salvador Benavides filed a negligence action (through his guardian ad litem Patricia Soltero-Morfin) alleging that the City of Stockton (City) is responsible for a dangerous condition that caused injuries to Benavides when an unidentified white car turned left into the path of his motorcycle at a City intersection. The City moved for summary judgment claiming design immunity, among other things, and the trial court granted the City's motion.

Benavides now contends the City did not establish the elements for the design immunity affirmative defense. Finding no merit to the contention, we will affirm the judgment. Because the City's design immunity is dispositive, we need not address Benavidez's other contentions and arguments.

## BACKGROUND

In April 2011, Benavides was riding a motorcycle on Martin Luther King, Jr. Boulevard in Stockton. As he approached the Sutter Street intersection, an unidentified white car, coming from the opposite direction, turned left in front of Benavides onto Sutter Street. Benavides ran into the white car, throwing Benavides off the motorcycle and causing severe injuries. The driver of the white car fled and was not identified.

Martin Luther King, Jr. Boulevard was known in the past as Charter Way and State Route 4. After the state completed the cross-town freeway, the state relinquished maintenance and control of Charter Way to the City in 2000. After the transfer, the City undertook a beautification project on Charter Way in the area of Sutter Street. The plan for the beautification project included raised median islands to separate eastbound and westbound traffic on Charter Way, along with center median landscaping. The plan also included left turn pockets and a break in the median to allow cars to turn left from Charter Way onto Sutter Street. The plan did not provide for a traffic signal or stop sign.

As part of its motion for summary judgment, the City filed the declaration of Christopher D. Kinzel, a licensed traffic engineer. Kinzel stated his professional opinion that the intersection of Martin Luther King, Jr. Boulevard and Sutter Street was safe and properly designed. Kinzel declared: “In reviewing the intersection in person and the plan documents, there is adequate sight distance and no trap or other danger is created at the intersection. [¶] Even if there were a signal at this intersection, unless left turns onto Sutter Street were signalized (that is, turns allowed only on a green left arrow), this accident still would have happened in that the cause of the accident was the failure of the left turning car to yield to oncoming traffic combined with the excessive speed of Mr. Benavides.”

The City moved for summary judgment claiming design immunity, among other things, and the trial court granted the City’s motion. Notice of entry of judgment was served in 2017.

Additional facts are set forth in the discussion.

### STANDARD OF REVIEW

We review the trial court's summary judgment ruling de novo (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860), applying the same process as the trial court. "Because summary judgment is defined by the material allegations in the pleadings, we first look to the pleadings to identify the elements of the causes of action for which relief is sought." (*Baptist v. Robinson* (2006) 143 Cal.App.4th 151, 159.) We then examine the papers supporting the motion to determine whether the defendant has carried the initial burdens of production and persuasion. The defendant has the initial burden to make a prima facie showing of the nonexistence of any triable issue of material fact and that the defendant is entitled to judgment as a matter of law; if the defendant carries that burden, the opposing party then has the burden to make a prima facie showing of a triable issue of material fact. (*Aguilar, supra*, 25 Cal.4th at p. 850.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid.*)

### DISCUSSION

Benavides contends the City did not establish the elements for the design immunity affirmative defense. We disagree.

A public entity may be held liable for injuries caused by a dangerous condition (Gov. Code, § 835), but not if the cause of the injuries falls within the scope of design immunity set forth in Government Code section 830.6.<sup>1</sup> (*Hampton v. County of San*

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<sup>1</sup> Government Code section 830.6 provides in pertinent part: "Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to

*Diego* (2015) 62 Cal.4th 340, 342-343.) To qualify for this immunity, the city “ ‘must establish three elements: (1) a causal relationship between the plan or design and the accident; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design.’ ” (*Id.* at p. 343.) We consider each of these elements in turn.

A

Benavides argues the City failed to establish a causal relationship between the design of the intersection and the accident. Although it is counterintuitive that the *defendant* must establish such a causal relationship, we are bound by the pronouncements of the California Supreme Court. (*Hampton, supra*, 62 Cal.4th at p. 343.) On this record, the requisite causal relationship was established because Benavides alleged the causal relationship in the operative pleading. The essence of Benavides’s negligence claim against the City was that the intersection, as designed with left turn pockets and a break in the median to allow left turns, was a dangerous condition that caused his injuries. A summary judgment motion necessarily includes a test of the sufficiency of the complaint’s allegations. (*American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1117-1118.) And the allegations in the complaint frame the issues to be considered in the summary judgment motion. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381.)

In the complaint, Benavides alleged that the intersection was “in a dangerous and defective condition, and constituted a concealed trap for the users thereof, in that, among other things there were uncontrolled, unwarranted, unsuitable, unsafe and inadequate left

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give such approval or where such plan or design is prepared in conformity with standards previously so approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefor or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor.”

turn lanes at a congested uncontrolled intersection where traffic volumes, traffic speeds, and a history of a high number of accidents determined that said left turn lanes should not be maintained and left turns should be prohibited . . . .” The complaint continued: “Said intersection and roadway constituted a concealed trap for motorists and pedestrians thereon and there were inadequate signs, warnings and other devices to safely control the movement of traffic and pedestrians at said location. Other conditions as yet unknown may have contributed to the dangerous and defective character of said public property and claimant will pray leave to assert same as they become known. By reason of the foregoing, said public property was in a dangerous and defective condition, creating a substantial risk of harm to persons using same with due care in a manner in which it was reasonably foreseeable said public property would be used.” As to causation, the complaint alleged: “As a direct and legal result of the negligence and carelessness of said defendants, and each of them, and the dangerous and defective condition of public property and the concealed trap, as aforesaid, [Benavides’s] motorcycle collided with an unknown vehicle identified as a Toyota Camry automobile making a left turn from westbound Martin Luther King Boulevard to southbound Sutter Street in the City of Stockton, California, causing plaintiff to sustain the severe and permanent personal injuries hereinafter alleged.”

Benavides argues the allegations of his complaint cannot be construed against him in this fashion. It is true that a plaintiff may assert alternative, inconsistent theories of liability in a pleading (*Castillo v. Barrera* (2007) 146 Cal.App.4th 1317, 1324), but Benavides has not done so here. He asserts no other basis for liability. He does not allege, for example, that the City failed to repair a pothole in the road or that the intersection was inconsistent with the beautification plan. Benavides cannot allege that a dangerous design caused his injuries and then attempt to disavow those allegations to survive a summary judgment motion. (*Mark Tanner Construction, Inc. v. HUB International Insurance Services, Inc.* (2014) 224 Cal.App.4th 574, 586-587.)

The causation element of the design immunity defense was established because Benavides alleged such a causal relationship in the complaint.

## B

Benavides next argues the City did not produce evidence that the injury-producing feature was part of its discretionarily approved design.

The second element of the design immunity defense is that the design element that caused the injuries was approved as part of a plan. (*Higgins v. State of California* (1997) 54 Cal.App.4th 177, 185 (*Higgins*).) “Discretionary approval simply means approval in advance of construction by the legislative body or officer exercising discretionary authority. [Citation.]” (*Ramirez v. City of Redondo Beach* (1987) 192 Cal.App.3d 515, 526 (*Ramirez*).) Here, the left turn pockets and break in the raised median that allowed cars traveling on Martin Luther King, Jr. Boulevard to turn left without traffic controls were part of the beautification project approved by the City in 2000. Those features were also what Benavides alleged were the cause of his injuries.

Benavides nevertheless argues the injury-producing feature was the absence of positive right-of-way controls protecting cross-traffic from Sutter and vehicles turning left from Martin Luther King, Jr. Boulevard. He observes that the City has shown no evidence that it performed any traffic study relating to the intersection. And he asserts that, because the City has not established that it considered the safety of allowing left turns at the intersection, the City, in Benavides’s words, “never engaged in any discretionary design process for the intersection of Charter Way/[Martin Luther King, Jr. Boulevard] and Sutter and never evaluated safety at that intersection.”

As we have explained, however, the second element only requires the City to show that the challenged design element was approved as part of a plan. It does not require the City to show that it studied the safety of its design. Here, the beautification plan, which included what Benavides claims were dangerous elements, was approved by the City before it was built.

Benavides further argues the City never engaged in a discretionary process to allow left turns because unrestricted left turns were allowed before the state turned over responsibility for the intersection to the City in 2000. The argument fails because the City approved and built the raised medians and left turn pockets after it assumed responsibility for the intersection.

The City satisfied the approval element of the design immunity defense.

### C

Finally, Benavides argues the City's plan to allow left turns from Martin Luther King, Jr. Boulevard onto Sutter Street was unreasonable.

Summary judgment is properly granted on a design immunity affirmative defense if the public entity provides substantial evidence that a reasonable public employee could have adopted the plan or a reasonable public entity could have approved the plan. (Gov. Code, § 830.6.) In this case, the question is whether it was reasonable to allow uncontrolled left turns from Martin Luther King, Jr. Boulevard onto Sutter Street. The City presented evidence that it was reasonable.

The City's burden on this element is different from the burden of the moving party on most issues in a summary judgment motion. The City must establish only that there is substantial evidence of reasonableness, not that there is no conflicting evidence.

(*Ramirez, supra*, 192 Cal.App.3d at p. 526.) "If there is *any substantial evidence* supporting the reasonableness of the approved design, design immunity applies."

(*Higgins, supra*, 54 Cal.App.4th at p. 185, original italics.) This element of Government Code section 830.6 is based on the separation of powers and protects the public entity from judicial second-guessing. (*Ibid.*) "Generally, a civil engineer's opinion regarding reasonableness is substantial evidence sufficient to satisfy this element. [Citation.]

(*Grenier v. City of Irwindale* (1997) 57 Cal.App.4th 931, 941.)

Here, the City filed the Kinzel declaration. Kinzel stated his professional opinion that the intersection of Martin Luther King, Jr. Boulevard and Sutter Street is safe and

properly designed, with no trap or other danger. Kinzel’s declaration is substantial evidence that satisfies the reasonableness element of the design immunity affirmative defense.

Benavides nevertheless argues that the plan to allow left turns was “intrinsically unreasonable because it was done without any review of the safety performance of the intersection.” But Benavides provides no authority supporting this argument. We conclude the argument lacks merit because a public entity may satisfy the reasonableness element of design immunity by providing the opinion of an expert that the plan was reasonable, regardless of any contrary evidence presented by the plaintiff. (See, e.g., *Higgins, supra*, 54 Cal.App.4th at pp. 182-184, 187 [traffic expert stated in declaration that design could reasonably have been approved].)

The trial court properly concluded the City established its immunity under the design immunity affirmative defense.

#### DISPOSITION

The judgment is affirmed. The City is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

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/S/  
MAURO, J.

We concur:

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/S/  
HULL, Acting P. J.

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/S/  
ROBIE, J.